

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4330 of 1983

Date of decision: 2-9-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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LA VAGHELA

Versus

STATE OF GUJARAT  
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Appearance:

MR Hardik Raval for Petitioner

Mr. Mukesh Patel for Respondent No. 1, 2  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 02/09/96

ORAL JUDGEMENT

The petitioner, a Police Sub Inspector in the Police Department of the State of Gujarat, has filed this petition complaining therein that the order of this court passed in the earlier writ petition filed by him being special civil application No.4664 of 1982 decided on

18th December, 1982 has not been complied with. Further grievance is made that the order dated 24th April, 1983 under which the petitioner has been denied his promotion from the year 1981-82 is illegal and arbitrary. The petitioner was superseded in promotion in the year 1979 and then in 1982. That supersession was challenged by the petitioner by filing special civil application No.4664 of 1982 which was decided by this court on 28-12-1982. The operative part of the order passed by this court reads as follows:

"The petition is required to be allowed by directing of the case of the petitioner for promotion at the time when the persons junior to him were promoted at the time of 1979 and 1982 selection, but if found fit in 1979, he shall get only deemed date of promotion, but no arrears of salary because of belated approach to the court. Rule is accordingly made absolute."

Directions were issued by this court to consider the case of the petitioner for promotion when his juniors were promoted in the year 1979 and 1982. This court has given such direction by holding that the criterion for promotion to the post of Police Inspector was seniority cum merit at the relevant time. After decision of this court the respondents have considered the case of the petitioner for promotion in the year 1979 and 1982, but he was not found suitable looking to his service record of 101 punishments, of which 27 were imposed in the year 1981, one in the year 1980 and 16 in the year 1979. The counsel for the petitioner does not dispute that the petitioner was given 101 punishments, but he contended that all those are minor punishments and as such where the criterion for promotion is seniority cum merit the same could not have been taken into consideration. The decision which has been given by this court in the case of the petitioner wherein it has been held that the criteria for promotion to the post of police inspector, seniority cum merits, was not followed and the Division Bench of this court held that the criterion for promotion to the post of P.S.I. is proved merit and efficiency. The counsel for the respondent pressed the point that the criterion is proved merit and efficiency. But I do not consider it necessary to go into this question because the decision given in the case of the petitioner was inter-party decision and it has attained finality and it has not been challenged by the respondents by filing L.P.A. As given out by the learned counsel for the respondent the case of the petitioner has been considered for promotion in the year 1979 and 1982 on the criterion of seniority cum merit.

4. Learned counsel for the petitioner has failed to cite any rule or regulation or any resolution of the Government which provides that minor punishment should not be taken into consideration while considering the case for promotion to higher post on the basis of seniority cum merit. The petitioner has not produced the orders of punishments which have been given to him from time to time, which are 101 in number. Considering the number of punishments given to the petitioner I do not find any illegality in the order dated 20th April, 1983 made by the respondents. The contention of the learned counsel for the petitioner that the judgment which has been given by this court in the previous petition has not been complied with is not correct. The judgment has been complied with, but the decision which has been given by the respondents is not in favour of the petitioner. The court has given direction only to consider the case of the petitioner on the date his juniors were promoted in the year 1979 and 1982. His case has been considered on the basis of the service record in which 101 punishments were recorded, and if he has been found not suitable for promotion then the order of the respondents does not call for interference of this court.

5. The petitioner has blemished service record. The counsel for the petitioner raised objection that the adversities of 1979 should not have been considered while denying promotion to the petitioner in the year 1982. But that contention is also devoid of merit. The court cannot be oblivious of the fact that the total punishments in the service record of the petitioner is 101 and in the year 1979 the punishments were 16 in number. If such an officer is given promotion certainly it will be giving premium for his misconduct. Taking into consideration the totality of the facts of the case I do not find any substance in the special civil application.

6. In the result the special civil application fails and the same is dismissed. Rule discharged. Ad interim relief granted earlier by this court stands vacated. No order as to costs.

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